



Comments by CONNECT
Submitted to the Federal Communications Commission
related to the
Further Inquiry into Two Under-Developed Issues in the Open Internet Proceeding
GN Docket No. 09-191, WC Docket No. 07-52

Summary:

CONNECT's mission is to propel creative ideas and emerging technologies to the marketplace by connecting entrepreneurs with the comprehensive resources they need to sustain viability and business vibrancy. Retaining and maintaining an open internet, including wireless connectivity, is critical to fostering the continued growth of entrepreneurs and start-up companies. Thus, CONNECT believes that mobile wireless is unique and worthy of exceptional treatment, meaning that this technology will benefit greatly from little to no additional regulation at this time. We do, nevertheless, believe that regulations encouraging consumer focused transparency are of paramount importance.

Introduction:

CONNECT is a nonprofit organization, birthed out of the University of California—San Diego, that is dedicated to creating and sustaining the growth of innovative technology and related businesses. Since 1985, CONNECT has assisted in the formation and development of over 2,000 companies and is widely regarded as one the world's most successful regional programs linking inventors and entrepreneurs with the resources they need for success. CONNECT focuses on research institution support, business creation and development, entrepreneurial learning, access to capital, protection of intellectual property, public policy advocacy, awards, recognition and networking. More than 40 countries and regions have adopted the CONNECT model, including New York City, the U.K, Sweden, Norway, Denmark, Australia and India.¹

CONNECT is the recipient of the 2010 Innovation in Economic Development Award in the "Innovation in Regional Innovation Clusters" category presented by the U.S. Department of Commerce's Economic Development Administration.

¹ To learn more, go to www.CONNECT.org



Overview:

First, CONNECT believes the pursuit of regulations on mobile wireless is premature. Mobile wireless is growing at a tremendous rate. To regulate this dynamic growth industry at this time would be reckless and might impede continuing innovation. Rather than asking questions of the community it might be more appropriate for the Commission to explain how it thinks regulation would help mobile wireless flourish. CONNECT thinks the Commission, or anyone else for that matter, would struggle to come up with compelling arguments in favor of restricting a fast-growing mobile wireless services.

Second, CONNECT believes enacting regulations impacting mobile wireless now is bad timing, especially given the pending migration from 3G technologies to LTE. New regulations now would create even more uncertainty in mobile wireless than our members would like to see. This is significant because our members include investors and service providers who are most likely to commit new capital and fund nascent mobile wireless projects.

Third and finally, CONNECT would like to express its support for the Commission's goal of increasing consumer focused transparency. We believe that everyone in the mobile wireless ecosystem, including consumers, service providers, equipment manufacturers, and investors stands to gain from making sure that each and every mobile wireless consumer is fully informed about the issues they face when purchasing and using mobile wireless services, devices, and applications.

Answers on the Transparency Issue in the Public Notice:

Appropriate disclosure requirements will revolve around what consumers need to know in order to make fully informed decisions when deciding whether to download an application, subscribe to a service, or buy a device. This type of disclosure would include the safety and data intensiveness of an application, the terms of the service being provided (cost, data limitations and costs), and the cost and capabilities of the device. Inappropriate disclosure requirements would force application, service, and device providers to divulge confidential trade secrets or business practices that might provide an unfair competitive advantage to competitors.

Given that the mobile wireless industry is so different from any other in our nation's history it is difficult to pinpoint a specific existing model that could provide guidance for shaping new transparency rules. The type of model that we foresee working best is the self-regulatory model that was employed successfully during the formation of the internet – CONNECT believes the model used by Internet Engineering



Task Force is especially instructive. The IETF uses a principles based approach to rule-making that allows it the flexibility necessary to adapt to changing circumstances. A similar model could be used in creating consumer disclosure principles and rules.

Answers on the Devices Issue in the Public Notice:

CONNECT believes the marketplace, including consumer preferences will ensure non-harmful technical interoperability between mobile broadband devices and networks. CONNECT believes that industry standards for mobile wireless networks are unnecessary at this time and could even be counterproductive to the development of technical interoperability between mobile broadband devices and networks because the industry standards could limit the development of innovative new devices that connect to networks in heretofore unimagined ways. The mobile wireless industry would be far better off allowing a trial period where device manufacturers can experiment with new devices, allowing consumers to decide if the degree of interoperability is appropriate.

The deployment of next generation technologies will further facilitate interoperability as it will become the common mobile network technology for the major mobile wireless providers. As such, LTE will enable easier technology transfer and increase the level of compatibility among devices. Not only that, it will also be easier to use the same device across multiple networks.

Furthermore, CONNECT believes that independent authorized testing centers is the preferred way to conduct testing and ensure compliance with technical standards. The reason for this is that there will assuredly be an overwhelming number of new devices that are brought to market (many by our members) in a very short time. The FCC testing center will be overwhelmed if it decides to take this task on itself. Not only that, but creating multiple independent authorized test centers will allow more devices to be tested in a shorter period of time, allowing innovative new devices to reach the marketplace rapidly.

If the Commission were to require mobile providers to allow any non-harmful device to connect to their network, subject to reasonable network management, mobile broadband provider conduct would not have to change all that much; however, the mobile providers should be given the right to contest or refuse allowing a device to connect so long as they provide good cause. What our members are afraid of is a deluge of new devices overwhelming a mobile broadband provider network or otherwise interfering with a mobile broadband provider's execution of its business plan.

Usage based data pricing business models do substantially mitigate, but do not eliminate, concerns about congestion of scarce network capacity by third party devices. With usage based data pricing consumers using third party devices will be forced to think about the amount of network capacity used because there is a financial incentive



to do so. This self-monitoring incentive can have a significant impact on congestion and the use of scarce network capacity.

Answers on the Applications Issue in the Public Notice :

CONNECT believes that to the extent an application uses a harmful or unsafe amount of network capacity or otherwise causes other network challenges mobile wireless providers should be allowed to prevent or restrict the distribution or use of certain types of applications. The prevention or restriction of the distribution or use of certain types of applications should, however, be limited to what is reasonable. An acceptable standard of reasonableness would have to be mutually agreed upon by a consortium of industry and regulatory policy experts. The overarching goal and extent to which mobile wireless providers should be permitted to prevent or restrict applications should be to protect the network and its users from unreasonable delay or degradation of mobile wireless service.

Additionally, CONNECT believes that the use of reasonable network management, by itself or in combination with usage based pricing, is sufficient to address such concerns. Furthermore, mobile wireless providers should retain the same level of discretion in determining which applications are suitable for its network regardless of whether the applications are proprietary or competitive with the services the provider offers. The decision the provider makes should be backed by objective facts and be reasonable in light of all relevant factors including, but not limited to, network congestion, network safety, consumer safety, consumer satisfaction, and network performance.

The ability of developers to load software applications onto devices for development or prototyping purposes should be protected to the extent such development or prototyping activities do not cause network problems. Developers should be protected from unreasonable blocking of their development or prototyping efforts on a case by case basis. To facilitate this type of case by case review a self regulatory body made up of developers, device manufacturers, and mobile wireless service providers should be established to adjudicate such cases that cannot be resolved through a simple grievance procedure.

The choice of what apps are included in app stores that providers operate should be entirely within their discretion; these are private for-profit businesses after all. Providers should have the right to decide what apps to include just as they make decisions regarding their own business model and growth strategy.

Conclusion:



Just as we have stated in previous filings, we believe the current marketplace is working and fostering innovation based on consumer demand. Commission action that is not based on a clear market failure or demonstrated competitive inequity demanding intervention, neither of which exist at this time, is more likely than not to hinder innovation and hamper emerging technologies. The Commission should continue to show restraint and let the innovation ecosystem continue to develop.

Respectfully submitted,

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